S.B. Civil Revision Petition No.474/2006

Kanta Devi.
vs.
Chhatar Singh and others.

Date : 22.11.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. SL Jain, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner has challenged the impugned order dated 7.7.2006 by which the first appellate court dismissed the petitioner's application for leave to defend the appeal against the judgment and decree dated 29.4.2006 in civil original suit no.63/2001.

Brief facts of the case are that respondent no.1 Chattar Singh filed suit for eviction of respondent no.2 Dilip Khan on the allegation that respondent no.2 is his tenant and because of the reasons mentioned in the suit, the respondent no.1 is entitled to decree for eviction of the respondent no.2 under the provisions of Rajasthan Premises (Control of Rent and Eviction) Act, 1950. The trial court decreed the suit of respondent no.1 ex-parte on 29.4.2006 and an eviction decree has been passed against the respondent no.2 in favour of the respondent no.1.

The tenant/respondent no.2 did not choose to challenge the eviction decree dated 29.4.2006, however, present petitioner Smt. Kanta Devi preferred an appeal to challenge the decree dated 29.4.2006 passed in favour of the respondent no.1 and submitted an application for leave to prefer appeal.

According to the petitioner, the respondent no.1 wrongly filed the suit claiming himself to be the owner of the suit property. According to the petitioner, respondent no.1's wife – Smt. Chanda Devi was the owner of the suit property and the petitioner purchased the suit property from her vide registered sale deed dated 23.8.2004. In view of the above, the petitioner became owner of the suit property and, therefore, her interest is involved in the property and hence, she has submitted appeal to challenge the eviction decree dated 29.4.2006.

The trial court dismissed the petitioner's application vide order dated 7.7.2006. Hence, this revision petition.

According to learned counsel for the petitioner, since the petitioner has purchased the suit property by registered sale deed, therefore, she became owner of the property and consequently, she has right to challenge the eviction decree as she is purchaser of the property during pendency of the suit. Learned counsel for the petitioner also wants to take help of Order 22 Rule 10 CPC which provides that in case of assignment, creation or devolution of any interest during the pendency of a suit, the suit

may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

Learned counsel for the petitioner also submitted that by virtue of the provisions of the Transfer of Property Act, she is entitled to all benefits which are attached with the property from the date he purchased the property.

I considered the submissions of learned counsel for the petitioner.

The stand taken by the petitioner is very strange. The decree is in favour of the plaintiff and the petitioner is claiming that by virtue of Order 22 Rule 10 CPC, she is entitled to become party to the suit. Thereby, according to the petitioner, she wants to pursue the rights of the respondent no.1/plaintiff because Order 22 Rule 10 CPC provides for continuation of suit in case, there is devolution of interest on any of the party in favour of the applicant transferee. It is not the case of the petitioner that there is devolution of interest of the defendant in her favour. The petitioner's claim is that the interest in the property has devolved on her, therefore, if the stand of the petitioner, which in fact is not there, but from the arguments of counsel for the petitioner is taken as devolution of interest in the suit property and devolution of interest of the plaintiff in her favour, then decree is in favour of the petitioner herself, then how she could have been aggrieved against the said decree.

If the statement of learned counsel for the petitioner is accepted that Dilip Khan, judgment debtor, is paying rent to the petitioner since she purchased the property, then there cannot be any grievance of the petitioner. If the statement of learned counsel for the petitioner is correct, Dilip Khan has stopped payment of rent from the date of decree, then also, remedy lies somewhere else, not by challenging this decree.

If the petitioner's stand, as it has been taken by the petitioner in her application, is accepted, then admittedly, she has not taken the purchased property from the plaintiff who is claiming himself to be landlord of tenant/defendant no.2. Admittedly, the property was purchased by the petitioner from the wife of plaintiff. If there is a conflict of interest of the plaintiff with his wife, and the petitioner is claiming interest in the property through plaintiff's wife, then this is a dispute between the petitioner and the plaintiff after the sale deed which is alleged to have been executed by the plaintiff's wife in favour of the petitioner. Meaning thereby, there may be a dispute of ownership of the property in question between the plaintiff and his wife and after that, the plaintiff vs. petitioner. If this is the plea, then that plea cannot be looked into in a case of eviction of tenant.

The application filed by the petitioner before the first appellate court was not only misconceived but appears to have been been filed with oblique motive but since it is

at admission stage, therefore, taking a liberal view, no costs is imposed.

Accordingly, this revision petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya